

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOARD OF TRUSTEES OF THE DISTRICT 6
HEALTH PLAN,

Plaintiffs,

-against-

PINNACLE MANAGING CO., LLC, *et al.*,

Defendants.

07 Civ. 6391 (GBD)

NOTICE OF MOTION

PLEASE TAKE NOTICE that Plaintiffs Board of Trustees of the District 6 Health Plan, by their undersigned counsel, will move this Court, before the Honorable George B. Daniels, United States District Judge for the Southern District of New York, at a date and time to be set by the Court, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, for an Order pursuant to Rules 9(b) and 12(b)(6) and (f) of the Federal Rules of Civil Procedure dismissing the First and Second Counterclaims and striking the First and Second Affirmative Defenses. The grounds for this motion, as more fully set forth in the accompanying memorandum of law, are that the First and Second Counterclaims fail to state claims upon which relief can be granted, and the First and Second Affirmative Defenses are insufficient as a matter of law.

PLEASE TAKE FURTHER NOTICE that any response by Defendants to this motion must be filed with the Court and served upon the undersigned on or before August 14, 2008, and that any reply by Plaintiffs is due on August 25, 2008.

Dated: New York, New York
August 4, 2008

Respectfully submitted,

BARNES, IACCARINO, VIRGINIA,
AMBINDER & SHEPHERD, PLLC

By: _____/s/
Charles R. Virginia (CV 8214)
Marc A. Tenenbaum (MT 3426)
Trinity Centre
111 Broadway, Suite 1403
New York, New York 10006
(212) 943-9080

Attorneys for Plaintiffs

TO: Joel E. Cohen, Esq.
Katherine D. Kale, Esq.
McDermott Will & Emery LLP
340 Madison Avenue
New York, New York 10173

Attorneys for Defendants